Comment Summary Response & Concise Statement – AQ246F
Amendments to the Air Quality Regulations
Nonattainment New Source Review; Prevention of Significant Deterioration
LAC 33:III.504 and 509

COMMENT 1: — The department should adopt the federal New Source Review (NSR) Reform package verbatim, except where noted. This would prevent the state from being at an economic disadvantage compared to other states that have or will adopt the federal NSR Reform package.

FOR: Failure to adopt the federal NSR Reform rules verbatim may put Louisiana at an economic disadvantage.

AGAINST: Adoption of the federal NSR Reform rules, with minor changes, will not put Louisiana at an economic disadvantage.

RESPONSE 1: — Louisiana's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) rules (LAC 33:III.509 & 504, respectively) will not put Louisiana at an economic disadvantage to states that have adopted the federal rules verbatim. The minor differences in the federal and state NSR Reform rules would not substantially alter the regulatory framework under which a company must operate.

Louisiana's June 20, 2005 AQ246L proposal eliminated "malfunctions" from the definitions of "baseline actual emissions" and "projected actual emissions." With the September 20, 2005 substantive changes (AQ240LS), "malfunctions" was reinstated where previously omitted, but defined. The federal rules do not define malfunctions. AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. This is consistent with 40 CFR 51.165(a)(1)(xxxv)(A)(*2*) & (B)(*2*) and 40 CFR 51.166(b)(47)(i)(*b*) & (ii)(*b*) of the federal rules.

Additionally, the NSR Reform federal rules exclude certain "clean coal" projects from the definition of "major modification" by deeming them not to be "a physical change or change in the method of operation." Louisiana's PSD and NNSR rules omit the exclusions for temporary and permanent clean coal technology demonstration projects and for the reactivation of very clean coal-

fired electric utility steam generating units. Louisiana has only 4 coal-fired power plants, a handful of pulp and paper power boilers that burn coal with other fuels, and no known decommissioned coal units. Due to the magnitude and variety of emissions associated with such facilities and the relative infrequency at which they are modified, LDEQ believes it would be best to maintain as much oversight as possible into matters associated with coal combustion.

Finally, the federal NSR Reform rules contain no apparent consequences for underestimation of "projected actual emissions." Louisiana's PSD and NNSR rules include additional requirements in the event "projected actual emissions" are underestimated. These provisions do not alter the applicability aspects of the rules.

COMMENT 2: — The Louisiana Department of Environmental Quality should not adopt the Clean Unit applicability test and the Pollution Control Project (PCP) exclusion. These provisions were vacated by the District of Columbia Circuit Court of Appeals and until the court's decision has been evaluated and the next possible steps are determined, these provisions should not be adopted.

The department agrees with the comment; no arguments are necessary.

RESPONSE 2: — The Clean Unit applicability test and the Pollution Control Project (PCP) exclusion will not be included in the final versions of LAC 33:III.504 and 509.

COMMENT 3: — With respect to the portions of the federal rule that were vacated by the D.C. Circuit Court of Appeals, the state should remove these portions from the final rule. In the Nonattainment NSR, those portions vacated by the court pertain to LAC 33:III.504.A.3.c and d, 504.A.5, 504.D.9, 504.F.11-12, 504.G-I, and the relevant definitions in 504.K. With Prevention of Significant Deterioration (PSD) the vacated portions pertain to LAC 33:III.509.A.5.e and f, 509.A.6, 509.X-Z and the relevant definitions in 509.B.

The department agrees with the comment; no arguments are necessary.

RESPONSE 3: — In light of the D.C. Circuit Court of Appeals decision, the provisions noted have either been removed or "reserved" in the

final versions of LAC 33:III.504 and 509.

COMMENT 4: — With regard to the remanded portion of the federal rule, the final rule should include these changes as proposed. If justification for the recordkeeping concerning projected actual emissions is later provided by EPA then no further change will be necessary. If the federal rule is later changed then the state can modify its regulation. The remanded portion of the rule concerning Nonattainment NSR is in LAC 33:III.504.D.9-10. The remanded portion with regard to PSD is set forth in LAC 33:III.509.R.6 and 7.

The department agrees with the comment; no arguments are necessary.

RESPONSE 4: — With regard to the remanded portions of the federal NSR rules establishing recordkeeping requirements in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase, LAC 33:III.504 and 509 will include the language set forth in EPA's December 31, 2002 rulemaking.

COMMENT 5: — The D.C. Circuit Court of Appeals remanded the recordkeeping provisions on NSR Reform. LDEQ should take this into consideration when it adopts its final regulations regarding the NSR Reform.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 5: — With regard to the remanded portions of the federal NSR rules establishing recordkeeping requirements in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase, LAC 33:III.504 and 509 will include the language set forth in EPA's December 31, 2002 rulemaking. If justification for the recordkeeping concerning projected actual emissions is later provided by EPA, then no further changes to LAC 33:III.504 and 509 will be necessary; if the federal rule is later changed, then LDEQ will modify its regulations as necessary.

COMMENT 6: — When adopting the Nonattainment New Source Review

(NNSR) requirements and the PSD requirements from the federal rules, LDEQ has proposed some provisions which differ from the federal requirements. LDEQ may adopt regulations that are different from but equivalent to the federal rules. The state must demonstrate that such provisions are as stringent as the revised base federal program. When adopting these provisions, LDEQ is encouraged to discuss the state's proposed program with EPA to help ensure that EPA can approve regulations that the state adopts.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 6: — Because LAC 33:III.504 and 509 differ slightly from the federal NSR Reform rules, LDEQ must demonstrate that such provisions are at least as stringent as their corresponding federal counterparts.

Louisiana's June 20, 2005 AQ246L proposal eliminated "malfunctions" from the definitions of "baseline actual emissions" and "projected actual emissions." With the September 20, 2005 substantive changes (AQ240LS), "malfunctions" was reinstated where previously omitted, but defined. The federal rules do not define malfunctions. AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. The addition of a definition which clarifies that the only "malfunction" emissions to be excluded are those not compliant with federal or state standards ensures that Louisiana's PSD and NNSR rules are at least as stringent as the federal NSR Reform rules.

Additionally, the NSR Reform federal rules exclude certain "clean coal" projects from the definition of "major modification" by deeming them not to be "a physical change or change in the method of operation." Louisiana's PSD and NNSR rules omit the exclusions for temporary and permanent clean coal technology demonstration projects and for the reactivation of very clean coal-fired electric utility steam generating units. Louisiana has only 4 coal-fired power plants, a handful of pulp and paper power boilers that burn coal with other fuels, and no known decommissioned coal units. Due to the magnitude and variety of emissions associated with such facilities and the relative infrequency at which they are modified, LDEQ believes it would be best to

maintain as much oversight as possible into matters associated with coal combustion. Because all major modifications to coal-fired units would be subjected to full NSR review, Louisiana's rules are at least as stringent as the federal rules.

Finally, the federal NSR Reform rules contain no apparent consequences for underestimation of "projected actual emissions." Louisiana's PSD and NNSR rules include additional requirements in the event "projected actual emissions" are underestimated; thus, it is at least as stringent as the federal rule. For a project originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that project has resulted or will now result in a significant net emissions increase, the owner or operator must either request that the administrative authority limit the potential to emit of the affected emissions units (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result, or submit a revised permit application within 180 days requesting that the original project be deemed a major modification.

COMMENT 7: §504.A — Remove the first phrase of paragraph A.3 which relates to the PCP provisions that have been vacated by the court. Paragraph A.3.c should be removed because this refers to Clean Unit provisions which have been vacated by the court. Paragraph A.3.d should be removed or revised to remove discussion that relates to the Clean Unit provisions vacated by the court. The first phrase of paragraph A.4 which provides an exception as specified in paragraph A.5 should be removed because paragraph A.5 relates to the PCP provisions which have been vacated by the court. Paragraph A. 5 should be removed because the court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 7: — In light of the D.C. Circuit Court of Appeals decision, the provisions noted have either been removed or "reserved" in the final version of LAC 33:III.504.

COMMENT 8: §504.D — Remove the reference to a Clean Unit in paragraph D.9 which the court vacated. Paragraph D.9 contains provisions that were remanded to EPA by the court. These recordkeeping

provisions, remanded to EPA to either provide an acceptable explanation of its "reasonable possibility" standard or to devise an appropriately supported alternative, should be taken into consideration by the state when finalizing the proposed rule. Although paragraph D.9.b meets the requirement of 40 CFR 51.165(a)(6), it should be made clear that such a provision does not relieve the owner or operator from the obligation to comply with any other requirement to obtain an approval or a permit that is required by the state, including any such approval or permit required under the approved SIP.

The department agrees with the comment; no arguments are necessary.

RESPONSE 8: — In light of the D.C. Circuit Court of Appeals decision, the reference to a "Clean Unit" in LAC 33:III.504.D.9 has been removed from the final version the rule.

With regard to the remanded portions of the federal NSR rules establishing recordkeeping requirements in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase, LAC 33:III.504 will include the language set forth in EPA's December 31, 2002 rulemaking. If justification for the recordkeeping concerning projected actual emissions is later provided by EPA, then no further changes to §504 will be necessary; if the federal rule is later changed, then LDEQ will modify its regulations as necessary.

As noted in the comment, the final sentence of LAC 33:III.504.D.9.b stems from 40 CFR 51.165(a)(6)(ii). It in no way relieves the owner or operator from its obligation to comply with all applicable provisions of LAC 33:III.Chapter 5–Permit Procedures. In order to eliminate any confusion, this sentence has been removed from the final version of §504.

If the regulation intended for an owner or operator's submittal to be evaluated, and initiation of construction conditioned on a permitting authority's approval, then such a requirement would be explicitly noted.

COMMENT 9: §504.F — Remove paragraph F.11 because this paragraph refers to decreases in emissions at a Clean Unit or PCP. The court vacated the Clean Unit and PCP provisions. Paragraph F.12 should be removed. The court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 9: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.504.F.11 and 12 have been "reserved" in the final version the rule.

COMMENT 10: §504.G — Paragraph G should be removed. The court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 10: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.504.G has been "reserved" in the final version the rule.

COMMENT 11: §504.H — Paragraph H should be removed. The court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 11: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.504.H has been "reserved" in the final version the rule.

COMMENT 12: §504.I — Paragraph I should be removed. The court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 12: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.504.I has been "reserved" in the final version the rule.

COMMENT 13: §504.J — LDEQ must demonstrate that §504.J.3.b is at least as stringent as the federal provision. The state limits this provision to emissions associated with authorized startup and shutdown and omits emissions associated with malfunction, whereas EPA requires that the PAL baseline include emissions associated with startup, shutdown, and malfunction. LDEQ could demonstrate stringency by showing that emissions associated with startups,

shutdowns, and malfunctions (other than "authorized" emissions associated with startups and shutdowns) are either: (a) emissions that would be excluded under paragraphs "a.ii" or "b.ii" (under *Baseline Actual Emissions* definition) as non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period; or (b) emissions that would be excluded under paragraph "b.iii" (under *Baseline Actual Emissions* definition) because they exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

Paragraph J.7.d differs from 40 CFR 51.165(f)(7)(iv) by limiting this provision to only emissions associated with authorized startup and shutdown and omits emissions associated with malfunction. This concern should be addressed as described above, for paragraph J.3.b.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 13: — The department believes use of the term "authorized" is consistent with federal language requiring the average rate, when calculating baseline actual emissions, to be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

Also, when determining projected actual emissions, a source should not assume this figure will be greater than its potential to emit (i.e., include emissions not "authorized" by its permit).

Louisiana's June 20, 2005 AQ246L proposal eliminated "malfunctions" from the definitions of "baseline actual emissions" and "projected actual emissions." With the September 20, 2005 substantive changes (AQ240LS), "malfunctions" was reinstated where previously omitted, but defined. The federal rules do not define malfunctions. AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards.

Concerning the association of the terms "authorized" and "malfunctions," the department's intent is to avoid semantic issues resulting from use of the term "malfunction."

For example, if a process upset diverts vent gases to a backup control device permitted as an alternate operating scenario, allowable emission limits may not be exceeded, though some might consider the process upset to be a "malfunction." In such a case, the emissions from the backup control device should be included in calculation of baseline actual emissions (unless, of course, they must be excluded for other reasons, such as promulgation of new regulations).

Releases that do **not** qualify for the federally permitted release exemption under CERCLA and EPCRA, based on EPA's April 17, 2002 guidance (67 FR 18899), should not be included.

It has not been the department's practice to grant variances for excess emissions resulting from malfunctions. Moreover, effectiveness of variances is not made retroactive to cover situations which have already occurred.

Region 6 has also weighed in on the issue of startup/shutdown emissions and NSR. Correspondence from Mr. David Neleigh, Chief of the Air Permits Section at EPA Region 6, to Ms. Joyce Spencer of TCEQ (formerly TNRCC) states that:

"The EPA acknowledges that at the time of previously issued permits many entities may not have had the technology or methodology for 'quantifying' and permitting their MSS [Maintenance, Startup and Shutdown] emissions. Instead, these permitted entities have relied upon the reporting and enforcement discretion provisions set forth in the Chapter 101 rule concerning 'excess emissions' above the permitted emissions limits. While EPA has endorsed enforcement discretion regarding these 'excess emissions' in the past, it has consistently maintained that these MSS emissions, if unpermitted, are **illegal emissions with regard to the NSR/PSD program** and are subject to the range of enforcement discretion of the permitting agency." (Emphasis added.)

COMMENT 14: §504.K — In paragraph "a" of the definition of *Actual Emissions* the state rule refers to "emissions of a pollutant..." and the federal rule refers to "emissions of a regulated NSR pollutant...".

Paragraph "b" of the definition provides for calculation of actual emissions during a "two-year" period whereas the federal rule provides for this calculation during a "consecutive 24-month" period. LDEQ should clarify this.

FOR: The definition of "Actual Emissions" should refer to emissions of a "regulated NSR pollutant."

AGAINST: Regulated pollutants are established in §504.L.Table 1, which is fully consistent with the "regulated NSR pollutants" established by the federal rule.

RESPONSE 14: — 40 CFR 51.165(a)(1)(xxxvii) defines "regulated NSR pollutant" as 1.) NOx or any volatile organic compounds, 2.) any pollutant for which a national ambient air quality standard has been promulgated, or 3.) any pollutant that is a constituent or precursor of a general pollutant listed previously provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

LAC 33:III.504 does not employ the term "regulated NSR pollutant." Instead, regulated pollutants are established in §504.L (Table 1), and general applicability is set forth in §504.A. The list of pollutants in Table 1 is fully consistent with the "regulated NSR pollutants" established by the federal rule.

In the final version of LAC 33:III.504, the definition of "actual emissions" establishes that, in general, such emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal major stationary source operation.

COMMENT 15: §504.K — The paragraphs "a.i" and "b.i" of the definition of *Baseline Actual Emissions* differ from 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1). Stringency could be demonstrated as stated in the first part of Comment #13.

The department agrees with the comment; no arguments are necessary.

RESPONSE 15: — See Response #13.

COMMENT 16: §504.K — The definition of *Clean Unit* should be removed because the court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 16: — In light of the D.C. Circuit Court of Appeals decision, the definition of "Clean Unit" has been removed from the final version of LAC 33:III.504.

COMMENT 17: §504.K — The state rule does not provide that a replacement unit is an existing unit under the definition of *Emissions Unit*. Therefore, paragraph "b" in the definition of *Emissions Unit* differs from its federal counterpart.

The state's proposed program appears to be less stringent than the federal program because the state's program does not include a definition of "replacement unit" which provides that no creditable emissions reductions shall be generated from shutting down an existing unit that is replaced. LDEQ must either include a definition of "replacement unit" or clarify that its program will not generate emission reduction credits from the shutdown of an existing unit that is replaced by a replacement unit.

The department agrees with the comment; no arguments are necessary.

RESPONSE 17: — The definition of "emissions unit" has been amended to classify a replacement unit as an existing emissions unit. Also, "replacement unit" has been defined in LAC 33:III.504.K.

COMMENT 18: §504.K —Paragraph "c.viii" should be removed from the definition of *Major Modification* because the court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 18: — In light of the D.C. Circuit Court of Appeals decision, the Pollution Control Project (PCP) provisions have been removed from the definition of "Major Modification" in the final version of LAC 33:III.504.

COMMENT 19: §504.K — Paragraph "c" should be removed from the definition of *Net Emissions Increase* because the court vacated the Clean Unit provisions.

Under the definition of *Net Emissions Increase*, paragraph "e.ii" differs from its federal counterpart because the state rule provides that a decrease must be federally enforceable while the federal rule provides that the decrease must be enforceable as a practical matter.

Under the definition of *Net Emissions Increase*, paragraph "e.v" should be removed because the court vacated the PCP and Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 19: — In light of the D.C. Circuit Court of Appeals decision, the Clean Unit and Pollution Control Project (PCP) provisions have been removed from the definition of "Net Emissions Increase" in the final version of LAC 33:III.504.

Also, the definition of "Net Emissions Increase" has been revised to reflect that a decrease in actual emissions is creditable only to the extent that it is enforceable as a practical matter (as opposed to federally enforceable) at and after the time that actual construction of the particular change begins.

COMMENT 20: §504.K — The definition of *Pollution Control Project* (PCP) should be removed because the court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 20: — In light of the D.C. Circuit Court of Appeals decision, the definition of "Pollution Control Project (PCP)" has been removed from the final version of LAC 33:III.504.

COMMENT 21: §504.K — The state is requested to demonstrate how it proposes to rectify the difference between the definition of *Projected Actual Emissions*, paragraph "b" and 40 CFR 51.165(a)(1)(xxviii)(B)(3). The state rule provides that the "average rate shall include ... authorized emissions associated with startups and shutdowns." The federal rule provides that "average rate shall include ...

emissions associated with startups, shutdowns, and malfunctions."

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 21: — See Response #13.

COMMENT 22: §504.K — The term "Reviewing Authority" is not defined in the proposed rule. If the term or equivalent term is defined elsewhere in LDEQ's regulations, LDEQ is requested to state where.

FOR: "Reviewing Authority" should be defined in LAC 33:III.504.

AGAINST: LAC 33:III.504 uses the term "administrative authority."

RESPONSE 22: — 40 CFR 51.165 defines "reviewing authority" as the State air pollution control agency ... authorized by the Administrator to carry out a permit program under this section (§51.165) and §51.166. Where the federal rule uses "reviewing authority," LAC 33:III.504 uses the term "administrative authority," defined in LAC 33:III.111 as "the secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee."

COMMENT 23: §504.K — LDEQ should cross-reference the major modification significant thresholds in Table 1, Section L, and as stated in the state definition of *Significant*, provide that significant is the lower of the level or the applicable major modification significant threshold in Table 1.

The department agrees with the comment; no arguments are necessary.

RESPONSE 23: — In the final version of LAC 33:III.504, the definition of "Significant" has been revised to read as follows:

Significant—in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed the lower of any of the following rates or the applicable major modification significant net increase threshold in Subsection L.Table 1 of this Section (§504).

Carbon monoxide	100 tons per year (tpy)

Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

COMMENT 24: §504.K — The term "Volatile Organic Compounds" (VOC) is not defined in the proposed rule. If the term or equivalent term is defined elsewhere in LDEQ's regulations, LDEQ is requested to state where.

FOR: "Volatile Organic Compounds" should be defined in LAC 33:III.504.

AGAINST: "Volatile Organic Compound" is defined in LAC 33:III.111.

RESPONSE 24: — "Volatile Organic Compound" is defined in LAC 33:III.111 as any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator of the U.S. Environmental Protection Agency designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR 60 (1988). A reference method, an equivalent method or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

COMMENT 25: §509.A — Revise the first sentence of paragraph "A.4.a" to remove the reference to an exception specified in paragraph "A.6" that relates to PCP provisions which the court vacated.

Remove paragraph "A.4.e". The court vacated the Clean Unit provisions. After removing paragraph "A.4.e," revise the reference to paragraphs "A.4.c-f" to make the reference consistent with the numbering.

Remove or revise the last sentence of paragraph "A.3.d" [A.4.f] because it relates to the Clean Unit provisions which the court vacated.

Remove paragraph "A.6" because the court vacated the PCP

provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 25: — In light of the D.C. Circuit Court of Appeals decision, the provisions noted have either been removed or "reserved" in the final version of LAC 33:III.509.

COMMENT 26: §509.B — Paragraphs "a.i" and "b.i" differ from 40 CFR 51.166(b)(47)(i)(a) and (ii)(a). The state must demonstrate how it proposes to rectify this discrepancy. One way this could be done is by showing that emissions associated with startups, shutdowns, and malfunctions (other than "authorized" emissions associated with startups and shutdowns) are either: (a) emissions that would be excluded under paragraph "a.ii" or "b.ii" as non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period; or (b) emissions that would be excluded under paragraph "b.iii" because they exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 26: — See Response #13.

COMMENT 27: §509.B — The definition of *Clean Unit* should be removed because the court vacated the *Clean Unit* provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 27: — The definition of "Clean Unit" has been removed from the final version of LAC 33:III.509.

COMMENT 28: §509.B — The state rule differs from the federal rule when referring to the definition of *Federally Enforceable*. The state uses the term "administrative authority" but does not define the

term "administrative authority."

The department agrees with the comment; no arguments are necessary.

RESPONSE 28: — The definition of "Federally Enforceable" has been revised to read as follows:

Federally Enforceable—all limitations and conditions that are enforceable by the administrator, including those requirements developed in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

COMMENT 29: §509.B — Paragraph "c.viii" should be removed from the definition of *Major Modification* because the court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 29: — In light of the D.C. Circuit Court of Appeals decision, the Pollution Control Project (PCP) provisions have been removed from the definition of "Major Modification" in the final version of LAC 33:III.509.

COMMENT 30: §509.B — Revise the definition of *Major Stationary Source* to conform to section 169(1) of the Clean Air Act, as amended in 1990 (definition of "major emitting facility" (as used for PSD)). In the state rule Table A identifies "municipal incinerators capable of charging 250 tons of refuse per day." Section 169(1) of the Clean Air Act (major emitting facility) identifies "municipal incinerators capable of charging 50 tons of refuse per day." The change from 250 to 50 tons of refuse per day was enacted in the 1990 amendments to the Clean Air Act.

The department agrees with the comment; no arguments are necessary.

RESPONSE 30: — Based on the language in §169 of the Clean Air Act, the definition of "Major Stationary Source" has been revised to include municipal incinerators capable of charging more than 50 tons of refuse per day. However, it should be noted that the definitions of "major stationary source" in 40 CFR 51.165, 51.166, and 52.21 identify municipal incinerators capable of charging more than 250 (not 50) tons of refuse per day as major sources.

COMMENT 31: §509.B — Clarify what is meant by the term "other administrative authority" in the definition of *Net Emissions Increase* in paragraph "c.i".

Remove paragraph "c.ii" because the court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 31: — The reference to "other administrative authority" has been removed from the definition of "Net Emissions Increase" in the final version of LAC 33:III.509.

In light of the D.C. Circuit Court of Appeals decision, the Clean Unit provisions have also been removed from the definition of "Net Emissions Increase" in the final version of the rule.

COMMENT 32: §509.B — Remove the definition of *Pollution Control Project* (PCP) because the court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 32: — The definition of *Pollution Control Project (PCP)* has been removed from the final version of LAC 33:III.509.

COMMENT 33: §509.B — The state should demonstrate that the definition of *Projected Actual Emissions* is at least as stringent as the federal rule, 40 CFR 51.166(b)(40)(ii)(b). One way this could be done is by showing that the emissions associated with startups, shutdowns, and malfunctions (other than "authorized" emissions associated with startups and shutdowns) are not authorized

emissions.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 33: — See Response #13.

COMMENT 34: §509.B — The term "Volatile Organic Compounds" is not defined in the proposed rule. If the term or equivalent term is defined elsewhere in the state regulations, please state where.

FOR: "Volatile Organic Compounds" should be defined in LAC 33:III.509.

AGAINST: "Volatile Organic Compound" is defined in LAC 33:III.111.

RESPONSE 34: — "Volatile Organic Compound" is defined in LAC 33:III.111 as any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator of the U.S. Environmental Protection Agency designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR 60 (1988). A reference method, an equivalent method or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

COMMENT 35: §509.L — In 40 CFR 51.166(l)(2), substitution or modification of an air quality model requires approval by the Administrator. The state rule allows for written approval by the "administrative authority". Administrative authority appears to be LDEQ. Clarification is needed on this.

The department agrees with the comment; no arguments are necessary.

RESPONSE 35: — LAC 33:III.509.L.2 has been revised such that written approval of the Administrator (the *administrator*, or authorized representative, of the Environmental Protection Agency as defined in LAC 33:III.111) must be obtained.

COMMENT 36: §509.R — Remove the reference to a Clean Unit in paragraph R.6. The court vacated the Clean Unit provisions.

Consideration should be given to the recordkeeping provisions in paragraph R.6 which the court remanded to EPA, either to provide an acceptable explanation of its "reasonable possibility" standard or to devise an appropriately supported alternative.

Clarify in paragraph R.6.b that the provision does not relieve an owner or operator from the obligation to comply with any other requirement to obtain approval or permit that is required by the state, including any such approval or permit required under the approved SIP.

The department agrees with the comment; no arguments are necessary.

RESPONSE 36: — In light of the D.C. Circuit Court of Appeals decision, the reference to a "Clean Unit" in LAC 33:III.509.R.6 has been removed from the final version the rule.

With regard to the remanded portions of the federal NSR rules establishing recordkeeping requirements in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase, LAC 33:III.509 will include the language set forth in EPA's December 31, 2002 rulemaking. If justification for the recordkeeping concerning projected actual emissions is later provided by EPA, then no further changes to §509 will be necessary; if the federal rule is later changed, then LDEQ will modify its regulations as necessary.

As noted in the comment, the final sentence of LAC 33:III.509.R.6.b stems from 40 CFR 51.166(r)(6)(ii). It in no way relieves the owner or operator from its obligation to comply with all applicable provisions of LAC 33:III.Chapter 5–Permit Procedures. In order to eliminate any confusion, this sentence has been removed from the final version of §509.

If the regulation intended for an owner or operator's submittal to be evaluated, and initiation of construction conditioned on a permitting authority's approval, then such a requirement would be explicitly noted.

COMMENT 37: §509.W — Clarify the difference between paragraph W.2 and the federal rule, §52.21(w)(2). The proposed rule would allow an owner or operator of a PSD permit issued under any earlier version of Section 509 to request a permit rescission. The federal rule provides that an "owner or operator ... who holds a [PSD] permit ... which was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this section, may request that the Administrator rescind the permit ... ."

The department agrees with the comment; no arguments are necessary.

RESPONSE 37: — §509.W.2 has been revised as follows:

Any owner or operator of a stationary source or modification who holds a permit for the source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of 40 CFR 52.21, may request that the administrative authority rescind the permit or a particular portion of the permit.

COMMENT 38: §509.X — Remove paragraph X because the court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 38: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.509.X has been "reserved" in the final version the rule.

COMMENT 39: §509.Y — Remove paragraph Y because the court vacated the Clean Unit provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 39: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.509.Y has been "reserved" in the final version the rule.

COMMENT 40: §509.Z — Remove paragraph Z because the court vacated the PCP provisions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 40: — In light of the D.C. Circuit Court of Appeals decision, LAC 33:III.509.Z has been "reserved" in the final version the rule.

Comment Summary Response & Concise Statement Key – AQ246F
Amendments to the Air Quality Regulations
Nonattainment New Source Review; Prevention of Significant Deterioration
LAC 33: III.504 and 509

COMMENT #	SUGGESTED BY
1, 3, 4	Kyle Beall of Kean Miller, et al., for LABI, LCA, LEUA, LMOGA, and LPPA
2, 5–40	David Neleigh / US EPA

Comment Summary Response & Concise Statement – AQ246L
Amendments to the Air Quality Regulations
Nonattainment New Source Review; Prevention of Significant Deterioration - Louisiana Revisions
LAC 33:III.504 and 509

COMMENT 1: — The rule should be analyzed separately from the federal rule concerning the cost benefit and risk benefit impacts. This rule could total over a million dollars in fiscal impact to the business community and hence, to the citizens of Louisiana.

FOR: The fiscal impact of the rules could total over a million dollars.

AGAINST: The department does not believe that the minor differences in the federal and state NSR Reform rules will have a substantial fiscal impact.

RESPONSE 1: — The minor differences in the federal and state NSR Reform rules do not substantially alter the regulatory framework under which a company must operate; thus, the fiscal impacts of LAC 33:III.504 and 509 should not be significantly different from their impacts if Louisiana were to have adopted the federal NSR Reform rules verbatim.

COMMENT 2: — Malfunction emissions should not be automatically excluded from the definitions of "baseline actual emissions" (BAE) and "projected actual emissions" (PAE). This differs significantly from the federal rule. It is realized that not all malfunctions should be included. Clearly, though, some situations do exist where malfunction emissions would be suitable for inclusion in permits. It has been a longstanding EPA policy to include compliant malfunction emissions in New Source Review (NSR) emissions calculations. Although the department has not called them malfunctions, some malfunction emissions have been authorized. In LAC 33:III.1507 and LAC 33:III.2307 emissions are authorized for start-ups, shut-downs, and "on-line operating adjustments." These provisions are State Implementation Plan (SIP) approved emissions and clearly indicate that emissions exempted by the department through these procedures are compliant. Even though policy has varied over the years, EPA has now made it clear that some malfunctions can be authorized pursuant to SIPs and permit conditions. If the department has a problem with

wording, then the department can define and permit some types of controlled emissions (abnormal emissions directed to a flare, scrubber, etc.) and exclude these controlled emissions from the definition of malfunctions. Additionally, including malfunction emissions in the permit will allow for better control over these emissions, use of these emissions toward the baseline, and use of these emissions in future actual emissions.

The department agrees with the comment; no arguments are necessary.

RESPONSE 2: — Louisiana's June 20, 2005 AQ246L proposal eliminated "malfunctions" from the definitions of "baseline actual emissions" and "projected actual emissions." With the September 20, 2005 substantive changes (AQ240LS), "malfunctions" was reinstated where previously omitted, but defined. The federal rules do not define malfunctions. AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards.

Concerning the association of the terms "authorized" and "malfunctions," the department's intent is to avoid semantic issues resulting from use of the term "malfunction."

For example, if a process upset diverts vent gases to a backup control device permitted as an alternate operating scenario, allowable emission limits may not be exceeded, though some might consider the process upset to be a "malfunction." In such a case, the emissions from the backup control device should be included in calculation of baseline actual emissions (unless, of course, they must be excluded for other reasons, such as promulgation of new regulations).

Releases that do **not** qualify for the federally permitted release exemption under CERCLA and EPCRA, based on EPA's April 17, 2002 guidance (67 FR 18899), should not be included.

EPA Region 6 has also weighed in on the issue of startup/shutdown emissions and NSR. Correspondence from Mr. David Neleigh, Chief of the Air Permits Section at EPA Region 6, to Ms. Joyce Spencer of TCEQ (formerly TNRCC) states that:

"The EPA acknowledges that at the time of previously issued permits many entities may not have had the technology or

methodology for 'quantifying' and permitting their MSS [Maintenance, Startup and Shutdown] emissions. Instead, these permitted entities have relied upon the reporting and enforcement discretion provisions set forth in the Chapter 101 rule concerning 'excess emissions' above the permitted emissions limits. While EPA has endorsed enforcement discretion regarding these 'excess emissions' in the past, it has consistently maintained that these MSS emissions, if unpermitted, are **illegal emissions with regard to the NSR/PSD program** and are subject to the range of enforcement discretion of the permitting agency." (Emphasis added.)

COMMENT 3: — The NSPS program excludes "increases in production hours" from NSR applicability. Regulated facilities must be given the opportunity to assess NSR applicability based on the nature of the emissions increase instead of being subject to an automatic retroactive PSD application. Revise the proposed language to explain that the provision is triggered only when the emissions increase which triggers significant threshold is related to the prior major modification and is subject to PSD or nonattainment NSR review.

The department agrees with the comment; no arguments are necessary.

RESPONSE 3: — If an increase is not related to a "physical change or change in the method of operation" (i.e., meets an exclusion under subparagraph c of the definitions of "major modification" in LAC 33:III.504.K and LAC 33:III.509.B), that increase does not have to be evaluated, at any point in time, for NSR applicability.

Also, the portion of an existing unit's emissions following a project that it could have accommodated during the consecutive 24-month period used to establish "baseline actual emissions" and that are also unrelated to the particular project, including any increased utilization due to product demand growth, should also be excluded (see subparagraph c of the definitions of "projected actual emissions" in LAC 33:III.504.K and LAC 33:III.509.B).

COMMENT 4: LAC 33:III:504.D.11 and R.10 — Revise the language in the following way to make it clear that "affected emissions units" includes any emission unit involved in the netting analysis.

D.11 For a projects originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines ~~a~~ that project has resulted or will now result in a significant net emissions increase, the owner or operator must either:

a. request that the administrative authority limit the potential to emit of the affected emissions units (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

R.10 Revisions to Projected Actual Emissions. For a projects originally evaluated in accordance with Paragraph A.3 of this Section and determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that the project has resulted or will now result in a significant net emissions increase, the owner or operator shall:

a. request that the administrative authority limit the potential to emit of the affected emissions (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

b. submit a revised PSD application within 180 days requesting that the original project be deemed a major modification.

The department agrees with the comment; no arguments are necessary.

RESPONSE 4: — The suggested language has been incorporated into the final versions of LAC 33:III.504 and 509.

COMMENT 5: LAC 33:III.509.R.6 — Change or amend this section to remove the provision stating that if recordkeeping requirements are not met, the source's potential to emit will be used instead of determining projected actual emissions. This should be a discretionary action by enforcement and not just an arbitrary consequence. Simply changing the language from "are presumed" to "may be presumed" would be an alternative.

The department agrees with the comment; no arguments are necessary.

RESPONSE 5: — The language in LAC 33:III.509.R.8 & 9 (as it appeared in

AQ246L) will be removed in the final version of the rule. These requirements do not stem from federal provisions established by 40 CFR 51.166.

Comment Summary Response & Concise Statement Key – AQ246L
Amendments to the Air Quality Regulations
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LAC 33:III.504 and 509

COMMENT #	SUGGESTED BY
1 — 5	Kyle Beall of Kean Miller, et al., for LABI, LCA, LEUA, LMOGA, and LPPA

* indicates a fast-track regulation